

# **Standard Operating Procedure – Gaining consent to investigate complaints**



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## 1 Introduction

The purpose of this document is to standardise the consent gathering process for complaints handling across NHS England and to ensure the process is in line with relevant legislation and best practice guidelines, including:

- The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009
- The Data Protection Act 2018
- The Access to Health Records Act 1990
- The NHS England Complaints Policy

NHS England is required to investigate complaints under the Local Authority Social Services and NHS Complaints Regulations 2009 (the Complaint Regulations). NHS England predominantly investigates complaints made against providers as the commissioning organisation. This requires NHS England to process personal information (including special category information) and share data with, and access data from, the public and/or organisations.

In addition, NHS England processes personal data to undertake certain actions linked to the complaints process, including sending customer satisfaction surveys, and sharing information with delegated commissioners.

NHS England is required to gain consent from complainants and other data subjects to undertake these tasks to comply with laws relating to processing personal data. This document will describe the legislation relating to personal information and the process for gaining consent.

## 2 Scope

This document is applicable to all complaints handling services across NHS England. It is not intended to be used by Commissioning Support Units (CSUs) unless that CSU has been specifically commissioned by NHS England to provide a complaints service on NHS England's behalf.

## 3 General Principles

The law relating to processing personal and special category data belonging to living individuals is detailed in the Data Protection Act (DPA). This Act has been amended in line with the UK General Data Protection Regulation (UK GDPR).

'Personal data' means any information relating to a person, such as their name, date of birth, or medical history. The person that data relates to is the 'data subject'.

'Special category data' is a category of personal data that includes racial or ethnic origin; political opinions; religious or philosophical beliefs; trade-union membership; health or sex life; or unique identity of a person by processing biometric or genetic data.

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When NHS England receives personal data and subsequently determines the reasons and manner in which it is processed (to support business objectives), it becomes the data controller of that data.

Processing' means any operation performed on personal data, such as:

- collecting
- recording
- organising
- structuring
- storing
- adapting or altering
- retrieving
- consulting
- using
- sharing
- restricting
- erasing
- destroying

Consent as discussed in this document refers to two distinct concepts. The first, which for clarity will be referred to as UK GDPR consent, describes a form of consent which can be used as a legal basis under UK GDPR to process personal information. UK GDPR defines consent as “any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her”.<sup>1</sup>

The second form of consent is a broader legal definition, which is referred to in the Complaints Regulations. The regulations do not specifically define consent, but for consent to be considered valid, it must be voluntary and informed, and the person consenting must have the capacity to make the decision.

In most instances in this document, where the word consent is used, it is referred to the consent as required under the Complaints Regulations. Where UK GDPR consent is being used as a legal basis, it will be specifically noted.

### **3.1 Gaining consent to process personal information to handle and investigate a complaint – the Complaint Regulations**

NHS England does not rely on UK GDPR consent as the legal basis to process personal data for compliance with data protection legislation when handling a complaint. Instead it uses the statutory requirement to investigate complaints under the Complaint Regulations as its legal basis to process personal information, described in UK GDPR article 6 (1)(e). It uses the exception described in article 9 (2)(h) (processing is necessary for the provision and management of health and social care systems and services) as a legal basis for processing special category data.

<sup>1</sup> GDPR article 4(11) <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=EN>

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NHS England predominantly investigates complaints made against providers as the commissioning organisation. This requires NHS England to share data with, and access data from, individuals and/or organisations.

The Complaint Regulations require consent for an organisation to pass information to a provider or for a provider to investigate a complaint. They also allow complaints to be raised by a representative acting on another person's behalf where that person has requested it.

In addition, the law of confidentiality requires that confidential health information can only be disclosed under three circumstances; with consent; in the public interest; and under legal power/obligation to do so.

Therefore, NHS England will seek to gain consent from the data subject to share their personal data with, and access their personal data from, members of the public and/or organisations in the process of handling their complaint.

NHS England will gain consent through the use of consent forms. The process for using these is described in section 4.

### **3.2 Gaining consent to process personal information relating to complaints – UK GDPR**

NHS England will rely on UK GDPR consent as a legal basis to process personal information relating to complaints where that processing is not covered by the requirements laid out in the complaints regulations, such as to contact them to undertake customer satisfactions surveys.

UK GDPR requires that people are given fair processing notice of how their personal data will be used and how they can complain if they are unhappy about the processing of their personal data. NHS England will provide a fair processing notice in an information leaflet which will be included with the consent forms (see Appendix 2).

NHS England will gain consent through the use of consent forms. The process for using these is described in section 4.

### **3.3 Gaining consent to share complaints with CCGs and ICSs**

The changing NHS landscape has placed increasing primary care commissioning and assurance responsibilities with CCGs, which will transition to ICSs in 2022. In some areas CCGs have asked NHS England to share details of complaints made about their providers to assist them with these functions.

NHS England can only share complaints information with CCGs and ICSs where we have received consent from the data subject to do so and will gain consent through the use of consent forms.

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Regional teams can share copies of complaints and complaint responses with CCGs and ICSs when consent has been received from the data subject. This includes where a CCG is providing contractual advice as part of the complaints investigation. If the CCG is not providing contractual advice complaints should only be shared once a response has been sent to the complainant and should not be shared at initial receipt.

Arrangements should be made directly with the CCG or ICS to determine which individual or team will receive documents, and they should have a quality or performance monitoring role. Documents containing personal information should not be sent to generic CCG or ICSs addresses which could be accessed by people without need to view this information.

If a region does not intend to share complaints information with a CCG or ICS they can remove the section seeking permission to do so from any consent form.

### 3.4 Capturing information relating to unpaid carers

A carer is a person who looks after or gives help or support to anyone because they have a long-term physical or mental health condition or illnesses or problems relating to old age.

NHS England is mandated to complete the KO41b complaints return on a yearly basis. One area of this return is “Status of complainant”, with the options being “patient/parent/guardian”, “carer”, and “other”. NHS England also has various streams of work to support unpaid carers.

Given that capturing whether a complainant is an unpaid carer is mandatory for the KO41b return and would also support NHS England colleagues, it was agreed that we would capture this information at the same time that consent is sought. As such, all consent forms will include a section to ask whether a person is an unpaid carer.

## 4 Consent forms

### 4.1 General principles

#### 4.1.1 What consent do we need

We require consent to:

- Share personal information with external people or organisations
- Access personal information held by external people or organisations

In regard to investigating complaints, we do this when we:

- Share a copy of the complaint with the provider
- Access health records
- Receive a response from the provider which may contain personal information

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- Share that response with the complainant where the complainant is not the data subject
- Contact a clinician involved in the data subject's care where an assessment on the data subject's capacity to consent is required

In most cases failure to receive consent to take actions required to investigate the complaint will prevent the complaint from progressing unless the complaint can be investigated without contacting external organisations or sharing personal information. Exceptions are detailed in section 4.6

NHS England may also seek to:

- Share a copy of the complaint and response with the local CCG/ICS or other relevant organisations to enable them to fully discharge their duties with regard to quality and patient safety
- Contact the complainant with a follow up satisfaction survey to facilitate improvements and learning

We require consent to take these two actions, but as we can investigate and respond to a complaint without doing so, failure to receive consent to do this cannot be used as a barrier to prevent the complaint from progressing.

An exception to this would be complaints where commissioning has been fully delegated and contractual advice may be required from the CCG/ICS. If this is the case failure to receive consent to share with the CCG/ICS would prevent the complaint from progressing.

We do not require consent to process personal information where this is covered by our legal obligation to investigate complaints. This includes sharing information internally with:

- Customer contact centre staff
- NHS England staff investigating the complaint
- Clinical advisors
- Contracting and performance teams
- Senior management staff

We do not require consent to share personal information with other organisations where it is in the public interest. Decisions on whether sharing is in the public interest should be made on a case by case basis

### 4.1.2 Who can give consent

Consent must be received from the data subject whose personal data is being either shared with or accessed from an external person or organisation.

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In some cases the data subject will be unable to provide consent due to a lack of physical and/or mental capacity. This includes children under 13. Under the complaints regulations, a person can raise a complaint on behalf of someone who lacks capacity to provide consent if the responsible body handling the complaint is satisfied the complaint is being made in the data subject's best interest. This is also the case if the data subject is deceased.

The process for assessing whether the data subject has capacity to give consent, and whether the complainant is acting in their best interest is detailed in section 4.2.4.

The process for assessing a child's competence to provide consent and establishing parental responsibility is detailed in section 4.2.5

The process for establishing who can raise a complaint on behalf of a deceased person and what information can be released to that person is detailed in section 4.2.6.

#### 4.1.3 How do we gain consent

NHS England will gain consent to process personal information relating to complaints through consent forms.

Six consent forms have been developed to cover the following circumstances:

- **'Complainant is the patient'** - A person making a complaint about themselves
- **'3<sup>rd</sup> party with capacity'** - A person making a complaint on behalf of another adult who can give consent
- **'3<sup>rd</sup> party without capacity'** - A person making a complaint on behalf of another adult who lacks capacity to give consent
- **'Patient is child'** - A person making a complaint on behalf of a child
- **'Patient is deceased'** - A person making a complaint on behalf of a deceased person
- **Customer satisfaction survey consent form** – A person making a complaint where consent is not required to investigate the complaint (for instance, where the complaint solely relates to NHS England), but consent is still required to send a follow up customer satisfaction survey to the complainant

The forms can be found in the appendix 1 and the information leaflet in appendix 2 of this document.

In some instances it will be acceptable to gain verbal consent. These circumstances are described in section 4.4.

## 4.2 Consent forms

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#### 4.2.1 Guidance applicable to all forms

Consent should be requested, in writing, at the same time as acknowledging the complaint. A copy of the relevant consent form and a fair processing notice information leaflet described in section 5 must be included with the acknowledgement. The following CRM fields must be completed:

- Consent sought date
- Consent type

The acknowledgement should give a date at least 10 working days after acknowledgement when consent should be returned.

The consent forms are templates which must be tailored to the specific complaint. Each contains square bracketed sections which must be amended to include information specific to the complaint prior to being sent. These sections have been highlighted for ease of reference.

The data subject should sign, complete and return the consent form. In some cases certain fields on the form may be incomplete. At a minimum the name, date of birth, home address, signature, and date fields should be complete for the form to be accepted. Exceptions, for instance for complaints with no fixed address, should be considered on a case by case basis.

Forms can be returned by post or via email directly to the regional complaints team. Digital signatures can be accepted if received from a verified email address belonging to the data subject. A verified email address is an email address which has been through a process to verify it is assigned to an individual.

Completed consent forms should be stored digitally on CRM. Any new contact information should be added to CRM. The following fields should be updated on CRM with relevant information:

- Consent given date
- Consent type
- Consent T3 survey
- Consent share with CCG
- Is complainant an unpaid carer?

If a complaint can be investigated without sharing personal data with or accessing personal data from an external person or organisation, then no consent is required to process that complaint. A Customer Satisfaction Survey consent form should be sent to them but a delay to return this should not delay the investigation of the complaint.

If there are any concerns that a consent form has been completed fraudulently the complaints officer should contact the person who completed the form by phone to seek further information.

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If the phone call does not resolve concerns about the authenticity of the consent form, then the person who completed the form will be required to verify their identity. The process for verifying identity is detailed in section 4.7.

Factors which may lead to concerns about fraudulently completed consent forms could include:

- Receiving incomplete, incorrect, or inconsistent information
- Complaints where there are identified disputes between individuals
- The likelihood someone may wish to access information about the topics raised in the complaint fraudulently
- Third party complainants who are unwilling to let you communicate directly with the patient
- Complaints who have provided contact information which differs from that held by the provider

This list is presented as a guide and is not to be considered prescriptive or exhaustive. All evidence received should be considered on a case by case basis. If there is any doubt about the identity of the complaint, personal information should not be released until the person's identity has been verified. A record of the decision making process must be recorded on CRM.

Some people may be unable to complete the consent forms in the form they are provided in this document. Reasonable adjustments should be considered to ensure the consent process is accessible.

The necessary reasonable adjustments will depend on the needs of the individual, and advice should be sought from the Equalities and Inequalities Unit if necessary.

Some adjustments can be anticipated and these are:

- Large font
- Easy read
- Alternative languages
- Verbal consent on a case by case basis

#### **4.2.2 'Complainant is the patient' form guidance**

The 'Complainant is the patient' consent form (appendix 6.1) should be used where the person making the complaint is the same person whose personal data will be shared with and/or accessed from external people or organisations.

#### **4.2.3 '3<sup>rd</sup> party with capacity' form guidance**

The '3<sup>rd</sup> party with capacity' form (appendix 6.2) should be used where the person making the complaint is not the person whose personal data will be shared with and/or accessed from external people or organisations. It can only be used where that person has capacity to provide consent.

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The consent form should be sent to the complainant who should arrange for the form to be signed by the data subject and returned. The form should not be sent directly to the data subject. Requests to do so should be considered on a case by case basis.

#### 4.2.4 '3<sup>rd</sup> party without capacity' form guidance

The '3<sup>rd</sup> party without capacity' form (appendix 6.3) should be used where the person making the complaint is not the person whose personal data will be shared with and/or accessed from external people or organisations, but that person does not have capacity to provide consent.

Under the complaints regulations, a person can raise a complaint on behalf of a person who lacks capacity to provide consent if the responsible body handling the complaint is satisfied the complaint is being made in the person's best interest.

NHS England is not capable of independently assessing a person's capacity to give consent. To establish capacity an opinion should be sought from a clinician involved in the patient's care who is qualified to make an assessment on their capacity.

To establish best interest anyone who holds lasting power of attorney for health and welfare for the data subject should be asked to provide consent and a copy of the power of attorney.

If power of attorney is not available, decisions should be made on a case by case basis using all information available, with consideration taken over whether the complaint can be investigated without sharing confidential personal data with the complainant. Advice should be sought from the medical directorate, safeguarding teams, and Caldicott Guardians if necessary. A record of the decision should be recorded on the CRM record for the case, and the Complaints Regulations require the outcome of this decision to be communicated in writing to the complainant.

#### 4.2.5 'Patient is child' form guidance

The 'Patient is child' form (appendix 6.4) should be used where the person making the complaint is not the person whose personal data will be shared with and/or accessed from external people or organisations, and that person is under 18.

Children aged 13 and above may be capable of giving consent. Whether or not a child is capable of giving consent will depend on the child's maturity and understanding. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the decision proposed for their consent to properly and fairly be described as true consent.

If a child is not capable of giving consent the complaint should be made by or with the consent of someone who holds parental responsibility or is otherwise legally recognised as their guardian.

To establish capacity, we must seek the opinion of a clinician involved in the child's care. To determine whether a clinician needs to be contacted the complainant should

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be asked their opinion of the child's ability to consent. If they believe the child has capacity to consent, then the child must complete and sign the relevant section of the form.

If the complainant does not believe the child can give consent, a capacity assessment needs to be made. NHS England is not capable of independently assessing a child's capacity to give consent, and therefore an opinion should be sought from a clinician involved in the patient's care who is qualified to make an assessment on their capacity.

It is not necessary to determine capacity for children under the age of 13.

To establish parental responsibility, decisions should be made on a case by case basis using all information available. If there is any doubt that the complainant has a right to access information about the child then advice should be sought from the medical directorate, safeguarding teams, and Caldicott Guardians as necessary. A record of the decision should be recorded on the CRM record for the case, and the decision should be communicated in writing to the complainant.

Mothers of children automatically are granted parental responsibility unless otherwise suspended through legal action. Fathers are granted parental responsibility where they are married to the mother at the time of the child's birth, or they are named on the birth certificate.

#### **4.2.6 'Patient is deceased' form guidance**

The 'Patient is deceased' form (appendix 6.5) should be used where the person making the complaint is not the person whose personal data will be shared with and/or accessed from external people or organisations, and that person is deceased.

The complaints regulations state complaints may be made on behalf of deceased people and do not include specific restrictions on who can do so. However confidential personal data relating to deceased individuals may be released as part of complaint response.

Personal data relating to deceased people is not covered by the DPA or UK GDPR. The law relating to processing medical records of deceased individuals is the Access to Health Records Act (AHRA).

The AHRA allows access to a deceased person's medical records if you are the executor or personal representative for the deceased's estate, or if you have a claim arising from that person's death.

To establish whether the complainant has a right to receive personal information in the response, evidence of their role as executor or personal representative should be sought via:

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- Grant of Probate
- Letters of Administration
- Copy of patient's Will (front page only)

If the complainant is not the executor or personal representative but is able to get consent from them this should be arranged. Alternatively, they should provide information relevant to a claim arising from the patient's death.

If they are unable to provide this information or establish the existence of an executor/personal representative consideration of whether to investigate and what personal information can be released should be given on a case by case basis using all information available, with advice from IG and a Caldicott Guardian. A record of the decision should be recorded on the CRM record for the case, and the decision should be communicated in writing to the complainant.

### 4.3 Chasing consent

The complaints officer should request at acknowledgement a date by which consent be returned. This should be at least 10 working days after the date on the acknowledgement letter. The complainant should also be advised at acknowledgement their complaint will be closed if consent is not received.

If consent has not been returned 10 working days after the date on the acknowledgement letter, the case officer may contact the complainant to chase consent. If they do so the following fields should be updated on CRM:

- Chased date
- Chased method

If consent is not returned the case may be closed on CRM using the call classification "admin closure – consent not received".

If a region is closing a case due to lack of consent, and it has chosen not to chase consent, the complaints officer must write to the complainant to inform them that their complaint has been closed and the reason why. This must not be done earlier than 15 working days after the acknowledgement has been sent.

If a case is closed due to lack of consent but consent is later received, it should be reopened on CRM, regardless of whether consent is received before or after day 40.

In previous versions of the SOP, where consent was received after day 40 a new case record was to be opened on CRM, however this is no longer necessary due to changes in how CRM reports SLAs.

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#### 4.4 Verbal consent

The law of confidentiality allows for consent to be received verbally. Verbal consent can be accepted to share information externally when attempting to resolve concerns through informal resolution. It should be clear when gaining verbal consent to what the person has agreed, and this should be clearly documented on CRM.

Verbal consent should not routinely be accepted to investigate a complaint but can be accepted either as a reasonable adjustment for someone who is otherwise unable to complete a consent form, or where the complaint includes no clinical element which would require access to their medical record. This should be agreed on a case by case basis.

If NHS England receives a complaint which it is unable to investigate due to not being the commissioner of the service, verbal consent can be accepted to forward that complaint to the appropriate organisation.

#### 4.5 Consent when handling MP cases

MPs have parliamentary privilege which provides a legal basis for them to access personal information relating to a constituent's request.

Consent is not required to share information relating to an existing complaint with an MP where it is clear the data subject involved in the complaint has asked their MP to contact us. However, if there is any doubt as to whether the complainant has consented to any actions we will take as part of the investigation, explicit consent should be sought from the data subject through the normal process.

If someone other than the data subject has made contact with the MP, consent must always be sought from the data subject to allow the information to be shared.

#### 4.6 Withdrawing consent

NHS England does not rely on consent as described within UK GDPR to process personal information and is not subject to the requirement to accept requests to withdraw consent to process personal information.

Requests to withdraw consent to investigate complaints should be considered taking into account our legal responsibilities to act in the public interest and protect patient safety. Withdrawal of consent will prevent the complaint from progressing.

In some instances it will not be appropriate to end investigation into issues raised by a complaint, and as such the complainant will not be able to withdraw consent. These instances should be assessed on a case by case basis using all information available and seeking advice from an IG representative and a Caldicott Guardian. A record of the decision should be recorded on the CRM record for the case and must be communicated to the complainant in writing.

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Investigations which continue despite a request to withdraw consent do not require a final response to be sent to the complainant, unless they have asked for one to be sent.

If a complainant's request to withdraw consent is accepted, but they later wish to reinstate the complaint, consent can be received verbally. If a complainant's requested to withdraw or reinstate consent are considered to be persistent and unreasonable this should be addressed via the persistent and unreasonable procedure outlined in the Complaints Policy.

#### 4.7 Releasing information and verifying identity

NHS England releases confidential and sensitive personal information in complaint responses. It therefore has a responsibility to ensure this information is only released to individuals entitled to have access. These individuals will be either:

- The data subject;
- A person the data subject has consented to the information being shared with; or
- Someone who is otherwise legally entitled to access that person's information, e.g. someone with lasting power of attorney for health and wellbeing, a court appointment deputy

The personal information held within a complaint response, alongside contextual information, must be considered before it is released to determine what level of verification is required of the person receiving the information. This assessment should consider:

- What information in the complaint response is new to the receiver
- Does the information contained in the response, or otherwise received from the provider, corroborate with that which has been previously provided by the receiver
- The sensitivity of the information being released, alongside the likelihood someone would want to access this information fraudulently
- Whether the receiver's address or other contact detail matches the contact details held on record at the provider
- Any legislation relating to conditions described in the response (such as the Gender Recognition Act)
- Any other information we have received contextually which would either confirm or deny the receiver's identity or relationship to the data subject

The complaints officer should assess the risk of data breach in sending the complaint response, and should seek IG advice if necessary.

If there is clear risk of data breach, an effort must be made to verify the receiver and/or the data subject's identity and their right to receive the information being released. This could be achieved by:

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- Asking them to confirm personal information held within their records. Questions must be asked in an open way which avoids sharing personal information, for instance, “What medication were you most recently prescribed?” as opposed to “When did you most recently request your repeat diazepam prescription?”
- Seeking confirmation from the provider. This could be confirming the address details for the complainant, or by confirming any interactions they have had directly with the complainant which would indicate they were aware of and had made the complaint.
- Seeking identification documentation.

Where individuals are asked to provide identity documentation they must provide either:

- a) 2 documents listed in table A and B, one of which must be from table A, OR
- b) 3 documents from table B

<b>Table A</b>	<b>Table B</b>
Passport	Birth certificate
Driving Licence	Adoption certificate
Armed forces ID card	UK asylum seekers Application Registration Card (ARC)
Proof of age card	National 60+ bus pass
Current account statement	A property rental or purchase agreement
Credit card account statement	Marriage certificate
Mortgage account statement	Fire brigade ID card
Secured loan account statement	Mobile phone contract account
Student loan account statement	Buildings, vehicle, or contents insurance
Savings account statement	An education certificate gained from an educational institution regulated or administered by a Public Authority (e.g. GCSE, GCE, A Level, O Level)
Northern Ireland voters card	An education certificate gained from a well-recognised higher educational institution
EEA/EU government issues identity card	DBS Enhanced Disclosure Certificate

The complaints officer should take a pragmatic approach towards verifying identity based on the risk of data breach and the information available. They must document the decision and outcome of any identity verification on CRM, and seek IG or Caldicott Guardian advice where necessary.

Before disclosing information contained in the data subjects medical record a healthcare professional is required to review to assess whether this may cause harm or distress. The healthcare professional may be the provider involved in the complaint and the review may take place at the point at which they release records to NHS England.

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If a decision is taken not to release information held in the response, this should be communicated to the complainant in writing.

## 5 Fair processing notice information leaflet

The following information must be provided within the fair processing notice:

- What the organisation will do with the information:
  - The identity and contact details of the data controller, and where applicable, the controller's representative
  - The contact details of the data protection officer, where applicable
  - The reason and legal basis under which the organisation intends to process that personal data
  - The recipients or categories of recipients of the personal data, if any
  - The period for which the personal data will be stored, or if that is not possible, the criteria used to determine that period
  - The existence of any automated decision making, including profiling, and the logic involved
- What the data subject can do if they wish to raise issues with the processing of their information
  - The existence of the right to request erasure of and access, amendment, or restriction to their personal data
  - The right to withdraw their consent at any time
  - The right to lodge a complaint with a supervisory authority
  - Whether the data subject is obliged to provide personal data and the possible consequences of failing to do so

NHS England will comply with the requirement to provide a fair processing notice by sending all complainants an information leaflet explaining how their personal data will be processed. A copy of this leaflet is available in appendix 7 of this document.

The leaflet can be tailored to remove the paragraphs which are not relevant to the complaint, for example from children, people who cannot give capacity, and deceased individuals.

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## 6 Appendix 1 – Consent forms templates



### 6.1 Complainant is the patient consent form

**Complaint Reference Number:** [XXXX-XXXXXXX]

Please complete and sign this form to give NHS England permission to access, share, and process personal data relating your complaint. More information relating to the handling of personal data is available in the included information leaflet.

If you wish to withdraw permission at a later date please contact your complaints officer at the earliest opportunity. Your complaint may be suspended unless you provide consent again at a later date.

I confirm I would like NHS England to process my complaint regarding [name of provider]. In order for my complaint to be processed I give permission for NHS England to do the following:

- Share [my letter of complaint/a written record of my verbal complaint] with [name of provider/s]
- Access my [medical/dental/orthodontic] records
- Receive a response from [name of provider/s] which may contain personal information about me

- Please check this box to confirm you are happy for us to share a copy of your complaint and the response with [enter name of CCG or ICS]
- Please check this box to confirm you are happy for us to contact you with a follow-up satisfaction survey.
- Please tick this box if you are an unpaid carer. A carer is a person who looks after or gives help or support to anyone because they have a long-term physical or mental health condition or illnesses or problems relating to old age.

<b>Your full name (in capitals):</b>	
<b>Your address:</b>	
<b>Your home telephone number:</b>	
<b>Your mobile telephone number:</b>	
<b>Your date of birth:</b>	
<b>Your email address:</b>	
<b>Signature:</b>	
<b>Date:</b>	

## 6.2 3<sup>rd</sup> party with capacity consent form



**Complaint Reference Number:** [XXXX-XXXXXXX]

*Both the patient and complainant must complete and sign the following form to give NHS England permission to access, share, and process personal data relating to your complaint. More information relating to the handling personal data is available in the included information leaflet.*

*If you wish to withdraw permission at a later date please contact your complaints officer at the earliest opportunity. Your complaint may be suspended unless you provide consent again at a later date.*

### To be completed by the patient:

I confirm I would like NHS England to process [name of complainant]'s complaint regarding [name of provider]. In order for their complaint to be processed I give permission for NHS England to do the following:

- Access my [medical/dental/orthodontic] records
- Receive a response from [name of provider/s] which may contain personal information about me and share it with [name of complainant]

Please check this box to confirm you are happy for us to share a copy of your complaint and the response with [enter name of CCG/ICS]

<b>Patient's full name (in capitals):</b>	[Enter patient name before sending]
<b>Patient's address:</b>	
<b>Patient's home telephone number:</b>	
<b>Patient's mobile telephone number:</b>	
<b>Patient's email address:</b>	
<b>Patient's date of birth:</b>	
<b>Signature:</b>	
<b>Date:</b>	

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**To be completed by person making the complaint (the complainant)**

I confirm I would like NHS England to process my complaint regarding [name of provider]. In order for my complaint to be processed I give permission for NHS England to do the following:

- Share [my letter of complaint/a written record of my verbal complaint] with [name of provider/s]
- Receive a response from [name of provider/s] which may contain personal information about me and [name of the patient]

Please check this box to confirm you are happy for us to share a copy of your complaint and the response with [enter name of CCG/ICS]

Please check this box to confirm you are happy for us to contact you with a follow-up satisfaction survey.

Please tick this box if you are an unpaid carer for the patient. A carer is a person who looks after or gives help or support to anyone because they have a long-term physical or mental health condition or illnesses or problems relating to old age.

<b>Complainant's full name (in capitals):</b>	
<b>Complainant's address:</b>	
<b>Complainant's home telephone number:</b>	
<b>Complainant's mobile telephone number:</b>	
<b>Complainant's email address:</b>	
<b>Signature:</b>	
<b>Date:</b>	

### 6.3 3<sup>rd</sup> party without capacity consent form



Complaint Reference Number: [XXXX-XXXXXXX]

Please complete and sign the following form to give NHS England permission to access, share, and process personal data relating to your complaint. More information relating to the handling of personal data is available in the included information leaflet.

If you wish to withdraw permission at a later date please contact your complaints officer at the earliest opportunity. Your complaint may be suspended unless you provide consent again at a later date.

I confirm I would like NHS England to process my complaint regarding [name of provider]. In order for my complaint to be processed I give permission for NHS England to do the following:

- Share [my letter of complaint/a written record of my verbal complaint] with [name of provider/s]
- Receive a response from [name of provider/s] which may contain personal information about [name of patient]
- Contact a clinician involved in [name of patient]'s care to assess their capacity to give consent. This may require the clinician to contact [name of patient]

- Please check this box to confirm you are happy for us to share a copy of your complaint and the response with [enter name of CCG/ICS]
- Please check this box to confirm you are happy for us to contact you with a follow-up satisfaction survey.
- Please tick this box if you are an unpaid carer for the patient. A carer is a person who looks after or gives help or support to anyone because they have a long-term physical or mental health condition or illnesses or problems relating to old age.

<b>Your full name (in capitals):</b>	
<b>Your address:</b>	
<b>Your home telephone number:</b>	
<b>Your mobile number:</b>	
<b>Your email address:</b>	
<b>Your signature:</b>	
<b>Date:</b>	

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<b>Patient's full name (in capitals):</b>	
<b>Patient's address:</b>	
<b>Patient's date of birth:</b>	
<b>Patient's current GP details:</b>	

**Please complete the below**

1. Do you have lasting power of attorney for health and welfare for [name of patient]?  
Yes  No

If yes, please supply a copy.

2. If no, but have consent from the person who holds power of attorney for health and welfare, please ask them to complete and sign below and supply a copy.

<b>Power of attorney name (in capitals):</b>	
<b>Power of attorney signature:</b>	
<b>Date:</b>	

3. Alternatively, if no power of attorney for health and welfare is in place for [name of patient], please provide information regarding your relationship and the reasons they lack capacity to make this complaint:

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## 6.4 Patient is child consent form



Complaint reference number: [XXXX-XXXXXXX]

Please complete and sign the following form to give NHS England permission to access, share, and process personal data relating to your complaint. More information relating to the handling of personal data is available in the included information leaflet.

If you wish to withdraw permission at a later date please contact your complaints officer at the earliest opportunity. Your complaint may be suspended unless you provide consent again at a later date.

I confirm I would like NHS England to process my complaint regarding [name of provider]. In order for my complaint to be processed I give permission for NHS England to do the following:

- Share [my letter of complaint/a written record of my verbal complaint] with [name of provider/s]
- Access [name of the child]'s [medical/dental/orthodontic] records
- Receive a response from [name of provider/s] which may contain personal information about [name of child]
- Contact a clinician involved in [name of patient]'s care to assess their capacity to give consent if they are over the age of 13. This may require the clinician to contact [name of patient]

- Please check this box to confirm you are happy for us to share a copy of your complaint and the response with [enter name of CCG/ICS]
- Please check this box to confirm you are happy for us to contact you with a follow-up satisfaction survey.
- Please tick this box if you are an unpaid carer for the child. A carer is a person who looks after or gives help or support to anyone because they have a long-term physical or mental health condition or illnesses or problems relating to old age.

### Child Details

Child's full name (in capitals):	
Child's Address:	
Child's Date of Birth:	
Child's current GP practice details:	



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Your Details

Your full name (in capitals):	
Your address:	
Your home telephone number:	
Your mobile telephone number:	
Your email address:	
Your relationship to the child:	
Signature:	
Date:	

If [name of child] is 13 or older, do you consider them capable of giving consent to making a complaint?

Yes  No  They are under 13

If you answered yes to this question, please ask [name of child] to read and sign the below:

*I confirm I would like NHS England to process [name of complainant]'s complaint regarding [name of provider]. In order for their complaint to be processed I give permission for NHS England to do the following:*

- Access my **medical/dental/orthodontic** records
- Receive a response from [name of provider/s] which may contain personal information about me and share it with [name of complainant]

Print name \_\_\_\_\_ Signature \_\_\_\_\_

If you feel [name of child] does not have capacity to give consent we may contact a clinician involved in their care to assess their capacity.

## 6.5 Patient is deceased

Complaint reference number: [XXXX-XXXXXXX]

Please complete and sign the following form to give NHS England permission to access, share, and process personal data relating to your complaint. More information relating to the handling of personal data is available in the included information leaflet.

If you wish to withdraw permission at a later date please contact your complaints officer at the earliest opportunity. Your complaint may be suspended unless you provide consent again at a later date.

I confirm I would like NHS England to process my complaint regarding [name of provider]. In order for my complaint to be processed I give permission for NHS England to do the following:

- Share [my letter of complaint/a written record of my verbal complaint] with [name of provider/s]
- Access [the deceased patient]'s [medical/dental/orthodontic] records
- Receive a response from [name of provider/s] which may contain personal information about [the deceased patient]

- Please check this box to confirm you are happy for us to share a copy of your complaint and the response with [enter name of CCG/ICS]
- Please check this box to confirm you are happy for us to contact you with a follow-up satisfaction survey.
- Please tick this box if you were an unpaid carer for the patient. A carer is a person who looks after or gives help or support to anyone because they have a long-term physical or mental health condition or illnesses or problems relating to old age.

### Patient Details

<b>Patient's full name (in capitals):</b>	
<b>Patient's address:</b>	
<b>Patient's date of birth:</b>	
<b>Patient's date of death:</b>	

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Your Details

Your full name (in capitals):	
Your address:	
Your home telephone number:	
Your mobile telephone number:	
Your email address:	
Your relationship to the patient:	

4. Are you the executor or personal representative for [name of the deceased]'s estate?  
Yes  No  *If no, please go to no.3*

5. If yes, then please supply a copy of one of the following documents as confirmation of your appointment :
- Grant of Probate
  - Letters of Administration
  - Copy of patient's Will (front page will suffice)

If none of these are in existence we will need something to prove that you are entitled to receive the complaint response, such as: birth certificate/marriage certificate/death certificate.

6. If no, but you have consent provided by the executor or personal representative, please obtain a signature of confirmation to that effect on this form, or provide us with their contact details so that we may confirm this with them directly.

Alternatively confirm that:

7. You have a claim arising from the patient's death and wish to access information relevant to your claim on the grounds that:

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Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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## 6.6 Customer satisfaction survey consent form consent form

**Complaint Reference Number:** [XXXX-XXXXXXX]

*We want to know how well you feel we managed your complaint, so we operate a survey which is sent either via post or email after you have received a response to your complaint.*

*NHS England will only contact you to ask you to complete the survey if you have opted-in, you can do this by ticking the relevant box on the consent form. If after consenting, you no longer want to receive a satisfaction survey from us, you can withdraw your consent by contacting us to let us know.*

Please check this box to confirm you are happy for us to contact you with a follow-up satisfaction survey.

*We want to know whether you are an unpaid carer. A carer is a person who looks after or gives help or support to anyone because they have a long-term physical or mental health condition or illnesses or problems relating to old age.*

*We ask this as NHS England is required to report the number of complaints made by carers, via the KO41b collection, which is a published report monitoring complaints received relating to NHS primary care in England. This information is reported completely anonymously.*

*This information also assists us to support unpaid carers by learning from complaints they have made.*

Please tick this box if you are an unpaid carer.

<b>Your full name (in capitals):</b>	
<b>Your address:</b>	
<b>Your home telephone number:</b>	
<b>Your mobile telephone number:</b>	
<b>Your date of birth:</b>	
<b>Your email address:</b>	
<b>Signature:</b>	
<b>Date:</b>	

## 7 Appendix 2 – Fair Processing Notice Information Leaflet



### Complaints, consent, and personal data information leaflet

This leaflet provides information on how NHS England processes personal data when handling complaints.

'Personal data' means any information relating to a person, such as their name, date of birth, or medical history. The person to whom that data relates is known as the 'data subject'.

When NHS England receives personal data it becomes the data controller of that information. 'Controller' means the body which determines the purposes and method of processing of personal data.

'Processing' means any operation performed on personal data, such as:

- collecting
- recording
- organising
- structuring
- storing
- adapting or altering
- retrieving
- consulting
- using
- sharing
- restricting
- erasing
- destroying

It is necessary for NHS England to process personal information in relation to a complaint to comply with our legal obligation to investigate complaints detailed in 'The Local Authority Social Services and National Health Service Complaints (England) Regulations 2009'. NHS England, as the data controller, will process personal data lawfully, fairly, and in a transparent manner under the principles of the 'UK General Data Protection Regulation (GDPR)'.

NHS England's privacy notice is available online here:

<https://www.england.nhs.uk/contact-us/privacy-notice/>

### Consent

Unless required to do so by law, we require consent from the data subject to:

- share their personal data with other organisations
- access their personal data held by other organisations

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To investigate a complaint we share details of the complaint with the organisation complained about, and access personal data it holds relating to people and events involved in the complaint. As such, we need consent from the data subject to do so before we can investigate a complaint.

Consent can only be given by the data subject involved in that complaint and cannot be given by someone making a complaint on someone else's behalf. If you are making a complaint on someone else's behalf you must contact them and ask them to sign and complete a consent form.

If we do not receive consent we will be unable to investigate the complaint, unless this can be done without sharing your personal data with or accessing your personal data from external organisations.

If you have already given consent but wish to withdraw it at a later date you can do so by contacting NHS England or your complaints officer at the earliest opportunity. Your complaint may be suspended unless you provide consent again at a later date.

## Consent from children

A child is considered to be anyone under the age of 18.

Children aged 13 and above may be capable of giving consent. Whether or not a child is capable of giving consent will depend on the child's maturity and understanding, and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of decision proposed for their consent to properly and fairly be described as true consent.

It is possible to raise a complaint on behalf of a child without the child providing consent if:

- The child is considered incapable of giving consent;
- You have parental responsibility for the child or permission from a person with parental responsibility to raise the complaint; and
- We are satisfied the complaint is being made in their best interests

NHS England is not capable of independently assessing a child's capacity to give consent. For children aged 13 or older we will ask you whether you consider them capable of giving consent.

If you feel they are capable of giving consent, we will ask that they complete and return a consent form. If you feel they are not capable of giving consent, we will consider the views of a clinician involved with the child's care who is qualified to make an assessment on their capacity. The clinician will make a decision based on the child's 'Gillick competence', which is a legal standard used to decide if a child is

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able to consent to their own medical treatment without parental permission or knowledge, and the Fraser guidelines, which are used specifically for children requesting contraception of sexual health advice and treatment. More information on Gillick competence and the Fraser guidelines is available online here:

<http://www.cqc.org.uk/guidance-providers/gps/nigels-surgery-8-gillick-competency-fraser-guidelines>.

If the child's ability to give consent is unclear or we are not satisfied the complaint is being made in their best interests we will seek advice from a Caldicott Guardian before making a final decision. A Caldicott Guardian is a senior person responsible for protecting the confidentiality of patient information and enabling appropriate information-sharing.

### **Consent from adults lacking capacity**

It is possible to raise a complaint on behalf of an adult who lacks capacity to give consent if we are satisfied the complaint is being made in their best interests. To establish whether the complaint is being made in their best interests we may ask for additional information, including whether anyone holds lasting power of attorney for that person's health and wellbeing.

NHS England is not capable of independently assessing a person's capacity to give consent. We will consider the views of a clinician involved with the person's care who is qualified to make an assessment on their capacity.

If their ability to give consent is unclear or we are not satisfied the complaint is being made in their best interests we will seek advice from a Caldicott Guardian before making a final decision. A Caldicott Guardian is a senior person responsible for protecting the confidentiality of patient information and enabling appropriate information-sharing.

### **Complaints on behalf of someone who has died**

The UK GDPR is only applicable to living individuals. Once a person has died their medical records fall under the Access to Health Records Act (1990).

You can access a deceased person's medical records if you are the executor or personal representative for the deceased's estate, or if you have a claim arising from the patient's death.

As confidential medical information may be released as part of the complaint response, we will ask for evidence of the above before investigating a complaint. If you are unable to provide this we will decide on a case by case basis whether we can investigate the complaint and if so what information we are able to share with you in the response.

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## Unpaid Carers

We ask whether you are an unpaid carer on our consent forms. A carer is a person who looks after or gives help or support to anyone because they have a long-term physical or mental health condition or illnesses or problems relating to old age.

We ask this as NHS England is required to report the number of complaints made by carers, via the KO41b collection, which is a published report monitoring complaints received relating to NHS primary care in England. This information is reported completely anonymously.

This information also assists us to support unpaid carers by learning from complaints they have made.

## Releasing personal data

We may release confidential personal data in our complaint responses. In order to protect your data privacy, we may ask you for additional information or documentation to verify your identity or entitlement to receive the information prior to sending our final response. If this is necessary we will contact you with more information and will communicate any decision not to release information in writing.

## Sharing personal data

Personal data may be shared internally where necessary with:

- Customer contact centre staff
- Staff investigating the complaint
- Clinical advisors
- Contracting and performance teams
- Senior management staff

In some instances we may wish to share information relating to your complaint externally with other healthcare organisations involved in the commissioning of the service about which you complained, such as your local Clinical Commissioning Group. We will only do this with your consent, which you can give by ticking the relevant box on your consent form.

We will not, under any circumstances, unless required to by law, share personal data with any other person or organisation except where related to your complaint, or where you have given explicit consent for us to do so.

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## Complaints Survey

We want to know how well you feel we managed your complaint, so we operate a survey which is sent either via post or email after you have received a response to your complaint.

NHS England will only contact you to ask you to complete the survey if you have agreed to opt-in, which you can do by ticking the relevant box on the complaints form. If you wish to opt out of the survey at a later date please contact us to let us know.

## Storage

Any personal data received is recorded and stored on a secure server with limited authorised access. Information is retained in accordance with NHS England's retention schedule and Department of Health Guidance. These are available online:

- NHS England: <https://www.england.nhs.uk/publication/corporate-records-retention-disposal-schedule-guidance/>
- Department of Health: <https://www.gov.uk/government/publications/records-management-code-of-practice-for-health-and-social-care>

## Accessing or amending information held about you

You have a right to request access to your personal data from NHS England under a subject access request. You also have the right to request restrictions be placed on the access to or processing of that data, or that it be amended or erased.

Requests must be made in writing and you will need to provide:

- Adequate information so your identity can be verified and your information located. This could include your name, address, date of birth, or complaints reference number
- An indication of what information you are requesting to enable us to locate it in an efficient manner.

To allow us to release this information to you we are required to verify your identity. We will provide information on what verification is acceptable when you make your request.

If you are unable to make your request in writing and would like to request reasonable adjustments please contact us via telephone.

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## Complaining about how we have processed your personal data

You have a right to lodge a complaint with the Information Commissioner's Office (the ICO) about any aspect relating to how we have processed your personal data. Information on how to complaint to the ICO is available on their website [www.ico.org.uk](http://www.ico.org.uk).

## NHS England contact information

If you wish to contact NHS England as the data controller this can be done in writing to

NHS England  
PO Box 16738  
REDDITCH  
B97 9PT

Or via email to: [England.contactus@nhs.net](mailto:England.contactus@nhs.net)

If you wish to contact NHS England's data protection officer, their contact email address is [england.dpo@nhs.net](mailto:england.dpo@nhs.net).

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